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7 JOONG MYUNG CHO,

Plaintiff,

8
9 v.
10
11 CG INVITES CO., LTD., et al.,

Defendants.

Case No. 24-cv-07112-WHO

**ORDER REGARDING DEFENDANTS'
MOTIONS TO DISMISS AND
PLAINTIFF'S MOTION TO STRIKE**Re: Dkt. Nos. 74, 75, 77, 78, 79, 80, 82, 83,
84, 8512 In this ongoing corporate ownership dispute, defendants CG Invites Co., LTD; Inchul
13 Chung; Soo Yeon Oh; Newlake Invites Investment, LTD; Newlake Alliance Management, LTD;
14 Seung Hee Lee (“Randall Lee”); and Yong Kyu Shin (collectively, the “CG Defendants”) move to
15 dismiss all derivative claims brought by plaintiff Joong Myung Cho (“Cho” or “plaintiff”) in his
16 third amended complaint (the “TAC”). Defendant Minkyu “Leo” Kim also moves to dismiss all
17 claims brought against him, including those for tortious interference with contract, aiding and
18 abetting fraud, and civil conspiracy. Cho, in response, also moves to strike alleged “new”
19 arguments made by the CG Defendants in their reply brief.20 The CG Defendants are correct in arguing that the contemporaneous ownership rule
21 prevents Cho from bringing his derivative claims in this case, as he lacked standing at the time of
22 filing suit as a non-shareholder to CGP. Accordingly, their motion to dismiss the derivative
23 claims is GRANTED. Cho’s motion to strike is DENIED, as the CG Defendants’ supposed “new”
24 arguments are in fact recapitulations of those points they made in the motion to dismiss.25 Kim’s motion to dismiss is GRANTED IN PART and DENIED IN PART. I agree with
26 Kim that Cho’s tortious interference with contract and derivative civil conspiracy claims fail for
27 similar reasons described in my prior orders dismissing these claims. However, Cho’s aiding and
28

1 abetting and non-derivative civil conspiracy claim are adequately pleaded; they do not appear to
2 focus exclusively on the issue of majority ownership at the time of filing suit.

3 **BACKGROUND**

4 The parties are now familiar with the background of this case, as I have detailed in
5 previous orders. *See* Order on Motions to Dismiss (“SAC Order”) [Dkt. No. 72]. I rely only the
6 information necessary to resolve this motion.

7 On August 18, 2025, I granted in part defendants’ motion to dismiss, providing Cho with
8 the opportunity to amend his complaint to allege more clearly “how he has attained 60% majority
9 shareholder status in CGP, a condition that undergirds the vast majority of his claims.” *Id.* at 1–2.
10 Subsequently, on September 8, 2025, Cho filed the TAC. *See* TAC [Dkt. No. 73].

11 On September 25, 2025, the CG Defendants moved to dismiss all derivative claims (counts
12 filed against them. *See* Notice of Motion and Motion to Dismiss Derivative Claims [Dkt. No. 74].
13 Shortly thereafter, Kim filed his own motion to dismiss on September 29, 2025. *See* Motion to
14 Dismiss all Claims Against Defendant Minkyu Leo Kim [Dkt. No. 75]. Cho filed his oppositions
15 on October 9, 2025, and October 14, 2025, respective. *See* Opposition to CGI Defendants’
16 Motion to Dismiss (“CG Oppo.”) [Dkt. No. 77]; Opposition to Minkyu Leo Kim’s Motion to
17 Dismiss (“Kim Oppo.”) [Dkt. No. 79]. The CG Defendants filed their reply on October 16, 2025.
18 *See* Reply in Support of Motion to Dismiss Derivative Claims (“CG Repl.”) [Dkt. No. 82]; Reply
19 in Support of Motion to Dismiss (“Kim Repl.”) [Dkt. No. 83].

20 In addition to the motions to dismiss, on October 20, 2025, Cho filed a motion to strike
21 Sections I, II, and III from the CG Defendants’ reply, arguing that it impermissibly raised new
22 arguments without providing him with an opportunity to respond. *See* Motion to Strike the CG
23 Invites Defendants’ New Arguments Raised on Reply (“Strike Mot.”) [Dkt. No. 84]. In the
24 alternative, Cho requests that I grant him the opportunity to file a sur-reply to address these issues.
25 *Id.* CG Defendants filed an opposition to the motion to strike on November 3, 2025, arguing that
26 the reply did not raise any new arguments and that they were all responsive to defenses raised by
27 Cho in his opposition. *See* Opposition to Plaintiff’s Motion to Strike Alleged “New Arguments”
28 in Reply (“Strike Oppo.”) [Dkt. No. 85].

1 **LEGAL STANDARD**

2 Under Federal Rule of Civil Procedure 12(b)(6), a district court must dismiss a complaint
3 if it fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion, the
4 plaintiff must allege “enough facts to state a claim to relief that is plausible on its face.” *Bell Atl.*
5 *Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible when the plaintiff
6 pleads facts that “allow the court to draw the reasonable inference that the defendant is liable for
7 the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citation omitted). There
8 must be “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* While courts
9 do not require “heightened fact pleading of specifics,” a plaintiff must allege facts sufficient to
10 “raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555, 570.

11 In deciding whether the plaintiff has stated a claim upon which relief can be granted, the
12 Court accepts the plaintiff’s allegations as true and draws all reasonable inferences in favor of the
13 plaintiff. *See Usher v. City of Los Angeles*, 828 F.2d 556, 561 (9th Cir. 1987). However, the court
14 is not required to accept as true “allegations that are merely conclusory, unwarranted deductions of
15 fact, or unreasonable inferences.” *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
16 2008).

17 If the court dismisses the complaint, it “should grant leave to amend even if no request to
18 amend the pleading was made, unless it determines that the pleading could not possibly be cured
19 by the allegation of other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000). In making
20 this determination, the court should consider factors such as “the presence or absence of undue
21 delay, bad faith, dilatory motive, repeated failure to cure deficiencies by previous amendments,
22 undue prejudice to the opposing party and futility of the proposed amendment.” *Moore v. Kayport*
23 *Package Express*, 885 F.2d 531, 538 (9th Cir. 1989).

24 **DISCUSSION**

25 **I. CG Defendants’ Motion to Dismiss**

26 **A. Applicable Law**

27 The parties first dispute the proper standard for a motion to dismiss in derivative
28 shareholder lawsuits. The CG Defendants contend that derivative standing in shareholder lawsuits

1 “requires strict compliance with [both] FRCP 23.1 and California Corporations Code § 800(b)(1),”
2 which requires parties to be shareholders at the time of filing a derivative suit. CG Mot. at 4. Cho
3 asserts that “in Federal diversity actions a plaintiff’s derivative standing is determined by Federal
4 Rule 23.1, not California Corporation Code § 800(b)(1),” as the issue of derivative standing is
5 procedural, rather than substantive, in nature. CG Oppo. at 2; *Kona Enter., Inc. v. Estate of*
6 *Bishop*, 179 F.3d 767, 769 (9th Cir. 1999).

7 Under Federal Rule of Civil Procedure 23.1, all complaints raising derivative claims must
8 “allege that the plaintiff was a shareholder or member at the time of the transaction complained of,
9 or that the plaintiff’s share or membership later devolved on its by operation of law.” Fed. R. Civ.
10 P. 23.1(b)(1). Section 800(b) of the California Corporations Code similarly prohibits any action
11 unless:

- 12 (1) The plaintiff alleges in the complaint that plaintiff was a
13 shareholder, of record or beneficially, or the holder of voting trust
14 certificates at the time of the transaction or any part thereof of
15 which plaintiff complains or that plaintiff’s shares or voting trust
16 certificates thereafter devolved upon plaintiff by operation of law
17 from a holder who was a holder at the time of the transaction or
18 any part thereof complained of; provided, that any shareholder
19 who does not meet these requirements may nevertheless be
20 allowed in the discretion of the court to maintain the action on a
21 preliminary showing to and determination by the court, by motion
22 and after a hearing, at which the court shall consider such
23 evidence, by affidavit or testimony, as it deems material, that (i)
24 there is a strong *prima facie* case in favor of the claim asserted on
25 behalf of the corporation, (ii) no similar action has been or is
26 likely to be instituted, (iii) the plaintiff acquired the shares before
27 there was disclosure to the public or to the plaintiff of the
28 wrongdoing of which plaintiff complains, (iv) unless the action
of the complaint which plaintiff proposes to file.
- 29 (2) The plaintiff alleges in the complaint with particularity plaintiff’s
30 efforts to secure from the board such action as plaintiff desires, or
31 the reasons for not making such effort, and alleges further that
32 plaintiff has either informed the corporation or the board in
33 writing of the ultimate facts of each cause of action against each
34 defendant or delivered to the corporation or the board a true copy
35

36 Cal. Corps. Code § 800(b)(1) (emphasis added).

37 To support his position, Cho primarily relies on *Kona Enterprises, Inc. v. Estate of Bishop*,

1 where the Ninth Circuit concluded that “Rule 23.1’s continuous share ownership requirement is
2 procedural in nature and thus applicable in diversity actions.” 179 F.3d at 769. CG Defendants
3 argue that *Kona* contemplates that “state derivative standing law reaches the same conclusion,”
4 and that “under both Rule 23.1 *and* California law,” derivative standing is required to be shown.
5 *See* CG Repl. at 10 (emphasis added). CG Defendants are incorrect. While *Kona* does discuss
6 state derivative law, it does so only when contemplating “if Rule 23.1 were inapplicable in
7 diversity actions,” which it affirmatively concluded applied. *See* 179 F.3d at 769–70. As a result,
8 the standing requirements for derivative claims must be in adherence with Rule 23.1, meaning any
9 argument based on § 800(b)(1) is inapplicable.

10 **B. Derivative Standing**

11 Turning to the merits of the parties’ arguments, the CG Defendants dispute the timing of
12 Cho’s allegations. They point out that the TAC “seeks to impose liability for acts that allegedly
13 occurred in 2023 and 2024,” even though “his six billion KRW capital contribution was not
14 completed under February 2025.” Mot. at 6. Because of this, the CG Defendants argue that the
15 “contemporaneous ownership rule”—the principle that a plaintiff “cannot sue derivatively for
16 misconduct that occurred before he became a shareholder”—bars Cho from bringing his derivative
17 claims. *Id.* (citing *Kruss v. Booth*, 185 Cal. App. 4th 699, 714 (2010); *Hogan v. Ingold*, 38 Cal. 2d
18 802, 809 (1952)).

19 In his opposition, Cho argues that no “quantum requirement” exists for derivative claims,
20 and that his complaint only “needs to allege that he was ‘a shareholder,’ not that he owns a
21 particular number of shares.” Oppo. at 3. This was met here, he claims—his TAC includes facts
22 showing he commenced his capital contribution obligations on July 15, 2024, which entitled him
23 to 15% of his 3,528,412 CGP shares. *Id.*; *see* TAC ¶ 147. Because his derivative claims focus on
24 post-July 15, 2024 conduct, Cho concludes that he was a shareholder at the time of the alleged
25 misconduct, making the contemporaneous ownership rule inapplicable. Oppo. at 3–4.

26 In reply, the CG Defendants point out that Cho does not *actually* show that shares of CGP
27 were, in fact, issued to him; rather, he simply lists the investments he made into the company
28 between July 15, 2024 and August 25, 2025. *See* CG Repl. at 3–4. Cho takes issue with this

1 characterization, which forms the basis of his motion to strike. *See* Strike Mot. He argues that the
2 “issuance” requirement was only raised for the first time on reply, and even so, “CG Invites
3 continues to block CGP from recognizing Plaintiff’s shares, and continues to interfere with and
4 obstruct CGP’s operations.” *Id.* at 2 (citing TAC ¶¶ 202–03, 233–35, 240–41).

5 CG Defendants are correct that issuance of shares is a necessary element to establish
6 derivative standing. Federal Rule of Civil Procedure 23.1 establishes “stringent” pleading
7 requirements, and courts have inferred from its language not only “that a derivative plaintiff be a
8 shareholder at the time of the alleged wrongful acts,” but also “that the plaintiff retain ownership
9 of the stock for the duration of the lawsuit.” *Quinn v. Anvil Corp.*, 620 F.3d 1005, 1012 (9th Cir.
10 2010) (citing *Lewis v. Chiles*, 719 F.2d 1044, 1047 (9th Cir. 1983)). Under California
11 Corporations Code § 409(a), “shares may be issued” only upon the issuance of consideration.

12 Here, the TAC alleges that Cho has standing to bring derivative claims because he
13 “invested 6 billion KRW (approximately \$4 million) into CGP for 60% of the company’s shares,”
14 and that “all conditions for the [Spinoff Agreements] to become effective and binding have been
15 met.” TAC ¶ 38. Cho also provides a chart clearly identifying his investments into CGP, which
16 began as early as July 15, 2024. *Id.* ¶ 147. However, nowhere in the TAC does Cho adequately
17 allege that he was issued CGP shares as a result of his investments. In fact, Cho appears to allege
18 the opposite—that “CG Invites and the CG Invites Defendants have used CG Invites’ refusal to
19 authorize the issuance of new CGP shares to excuse CG Invites’ failure to satisfy its obligation to
20 invest 4 billion KRW in CGP, and justify CG Invites’ attempts to divest Dr. Cho of his controlling
21 interest in CGP.” TAC ¶ 202. This refusal was predicated by CG Invites’ decision not to “amend
22 CGP’s articles of incorporation, which CG Invites asserts is a precondition to CGP’s issuance of
23 new shares.” *Id.* ¶ 203.

24 I previously addressed the issue of CGP’s Articles of Incorporation in the SAC Order,
25 where I wrote that it was “not clear to me what effect the (lack of) amendment to CGP’s articles of
26 incorporation [would] have on Cho’s claims.” SAC Order at 27. Here, the answer becomes clear:
27 considering the lack of amendment, Cho could not have been issued shares and thus lacked the
28 requisite standing to plead a derivative claim.

1 The CG Defendants' issuance argument stems from the same statutory authority—Federal
 2 Rule 23.1 and California Corporations Code §§ 409 and 880(b)(1). While the original motion
 3 admittedly does not reference the issuance problem, it can plausibly be inferred as a response to
 4 Cho's argument about the partial issuance of shares under § 409(d). *See* CG Oppo. at 3.
 5 Accordingly, I do not think that this argument should be struck. “While a court need not consider
 6 evidence submitted for the first time in a reply,” *Zamani v. Carnes*, 491 F.3d 990, 997 (2007), “it
 7 may consider evidence and argument submitted with a reply that is *responsive* to arguments raised
 8 in the non-moving party’s brief in opposition.” *Ejonga v. Strange*, No. 2:21-cv-01004-RJB-GJL,
 9 2023 WL 4457142, at *1 (W.D. Wash. July 11, 2023) (citing *PSM Holding Corp. v. Nat'l Farm*
 10 *Fin. Corp.*, No. CV 05-08891, 2013 WL 12080306, at *4 (C.D. Cal. Oct. 8, 2013), *aff'd in part*,
 11 884 F.3d 812 (9th Cir. 2018)).

12 Therefore, because Cho cannot show derivative standing at this stage, his derivative claims
 13 must be dismissed.¹

14 **C. Cho’s Remaining Claims**

15 Assuming dismissal is necessary for Cho’s derivative standing claims, the TAC pleads
 16 nine causes of action—Count One (breach of shareholders’ agreements against CG Invites); Count
 17 Two (breach of subscription agreement against CG Invites); Count Five (breach of the implied
 18 covenant of good faith and fair dealing against CG Invites); Count Six (fraud against CG Invites,
 19 Inchul Chung, and Yong Kyu Shin); Count Eight (tortious interference with contract against Leo
 20 Kim); Count Nine (aiding and abetting fraud against Soo Yeon Oh); Count Ten (aiding and
 21 abetting fraud against Leo Kim); Count Eleven (civil conspiracy against all defendants); and
 22 Count Thirteen (declaratory judgment). *See* TAC ¶¶ 152–309.

23 Each of these claims are brought by Cho in his personal capacity, arise from the same facts
 24

25 ¹ I similarly do not find that equitable standing favors Cho. The Ninth Circuit has “rejected
 26 applying an equitable exception to the continuous ownership requirement.” *Quinn v. Anvil Corp.*,
 27 620 F.3d 1005, 1012–13 (9th Cir. 2010). Some courts outside the Ninth Circuit have recognized
 28 equitable standing for the continuous ownership requirement, including when a shareholder
 “challenges a corporate transaction that resulted in no continuing shareholders that could bring
 derivative claims,” or “where there is no business justification for a transaction other than to
 terminate a lawsuit. *Id.* None of those situations apply here.

1 as the derivative claims, and thus avoids any derivative standing issues. *See id.* Even without his
2 derivative claims, each form of relief sought would still be permissible. *See id.* Accordingly, I
3 find it appropriate for this case to proceed without Cho's derivative claims.

4 **II. Minkyu "Leo" Kim's Motion to Dismiss**

5 In addition to the CG Defendants, Kim seeks to dismiss all claims brought against him,
6 including Count Eight (tortious interference with contract), Count Ten (aiding and abetting fraud),
7 and Counts Eleven and Twelve (civil conspiracy). *See Memorandum of Points and Authorities in*
8 *Support of Motion to Dismiss all Claims Against Defendant Minkyu Leo Kim ("Kim Mot.")* [Dkt.
9 No. 75-1]. Kim first argues that all of Cho's claims against him are premised on a theory that he
10 "attempted to deprive Cho of his majority ownership of CGP," despite the TAC allegedly
11 establishing that Cho "was not the majority owner of CGP at the time" of the alleged incidents.
12 *Id.* at 5. He also adopts the CG Defendants' argument regarding Cho's derivative standing for his
13 civil conspiracy (Count Twelve) claim, as he was not CGP's majority owner when he filed this
14 action. *See id.* at 13. Finally, he argues that Cho failed to correct the deficiencies in his aiding and
15 abetting fraud (Count Ten) claim, which I previously dismissed. *Id.*

16 **A. Count Eight (Tortious Interference with Contract)**

17 Under California law, a tortious interference with contractual relations claim has five
18 elements: "(1) a valid contract between plaintiff and a third party; (2) defendant's knowledge of
19 the contract; (3) defendant's intentional acts to induce breach or disruption of the contractual
20 relationship; (4) actual breach; and (5) resulting damage." *hiQ Labs, Inc. v. LinkedIn Corp.*, 31
21 F.4th 1180, 1191 (9th Cir. 2022).

22 Kim maintains that the TAC alleges he "interfered with a deal between CG Invites and
23 Cho whereby Cho would become the majority owner of CGP because Kim attempted to become
24 the head of CGP himself" in June and July 2024. Kim Mot. at 11 (citing TAC ¶¶ 246–51). He
25 argues that Count Eight only provides "one example of Kim disrupting the performance of any
26 agreement"—that he "interfered with Cho's majority ownership of CGP." Kim Repl. at 11.
27 However, because Cho was not the majority owner of CGP during June and July 2024, Kim
28 concludes this claim must be dismissed. *Id.*

1 Conversely, Cho argues that my order regarding his second amended complaint (“SAC
2 Order”) is instructive on this issue. *See Order on Motions to Dismiss (“SAC Order”)* [Dkt. No.
3 72] at 20. There, I found that Cho “adequately pleaded a claim against Leo Kim for tortious
4 interference with contract” based on the evidence provided to me—namely, emails on June 29,
5 2024 and June 30, 2024 that showed Kim seeking legal advice to displace Cho as the head of the
6 Ivaltinostat clinical trials. *Id.*; *see Kim Oppo.* at 4. Cho maintains that Kim has provided “no
7 ground[s] for reconsideration” of my Order, as he “had ample opportunity to raise [other]
8 argument[s] when he challenged the [SAC], but he chose not to.” *Kim Oppo.* at 5.

9 Absent from Cho’s discussion of the SAC Order is a crucial fact—that this finding was
10 contingent upon a showing by Kim that “plausibly demonstrate animosity toward Cho and
11 *constitute actions to displace [him] from majority control under the Spinoff Agreements.*” *Id.* at
12 21 (emphasis added). As explained above, Cho was not a majority owner of CGP until February
13 2025, months after the June and July emails were sent by Kim. Because the date of majority
14 ownership was not pleaded in the SAC, my reasoning for upholding the tortious interference claim
15 does not stand now that we know the date of majority ownership by Cho. Since Cho has not
16 provided any other information in the TAC suggesting that Kim was “disrupt[ing] . . . the
17 contractual relationship,” Count Eight must be dismissed.

18 **B. Count Ten – Aiding and Abetting**

19 A claim for aiding and/or abetting fraud in California requires the plaintiff to allege that
20 the defendant (1) “substantially assisted or encouraged another to breach a duty, or . . .
21 substantially assisted another’s tort through an independently tortious act”; (2) had actual
22 knowledge of the fraudulent conduct or breach; and (3) was a substantial factor in the plaintiff’s
23 harm. *ESG Cap. Partners, LP v. Stratos*, 828 F.3d 1023, 1039 (9th Cir. 2016). Under Rule 9(b),
24 claims for aiding and/or abetting fraud require the plaintiff to allege the substantial assistance
25 element with heightened specificity. *McGraw Co. v. Aegis Gen. Ins. Agency, Inc.*, No. 16-cv-
26 00274, 2016 WL 3745063, at *6 (N.D. Cal. July 13, 2016) (citing *Neilson v. Union Bk. of Cal.*,
27 N.A., 290 F. Supp. 2d 1101, 1129–30 & n.81 (C.D. Cal. 2003)). The heightened pleading standard
28 prohibits a complaint from “merely lump[ing] multiple defendants together”; they must

1 “differentiate [the] allegations . . . and inform each defendant separately of the allegations
2 surrounding his alleged participation in the fraud.” *Swartz v. KPMG LLP*, 476 F.3d 756, 764–65
3 (9th Cir. 2007).

4 In the TAC, Cho alleges that after being terminated, Kim “accessed CGP’s and CG
5 Invites’ servers . . . [and] confidential business documents, downloaded the documents to his CGP
6 electronic devices, and then provided those documents and communications to CG Invites in
7 furtherance of Defendants’ fraud.” TAC ¶ 273. Kim accessed the CGP and/or CG Invites servers
8 “799 times” between June 27, 2024, and July 4, 2024, despite being terminated on June 27, 2025.
9 *Id.* ¶¶ 272. Kim then “destr[oyed] the evidence stored on his CGP-issued laptop and iPhone.” *Id.*
10 ¶ 274. However, CG Invites was able to use the confidential CGP documents Kim allegedly
11 downloaded in furtherance of their fraud, including the “particular legal actions taken in the weeks
12 immediately after Leo Kim’s departure . . . such as . . . demanding Dr. Cho’s immediate
13 resignation . . . from the board of CGP.” *Id.* ¶ 275.

14 The parties dispute whether these facts show that Kim’s actions were a “substantial factor”
15 in the fraud that caused Cho’s alleged harm. *See ESG Cap. Partners, LP*, 828 F.3d at 1039. Kim
16 argues that the TAC alleges he “aided and abetted fraud by participating in conversations about
17 taking over CGP from Cho in June 2024 and accessing CGP’s and CG Invites’ computer servers
18 in June and July 2024.” Kim Mot. at 12; TAC ¶¶ 12, 147, 268–78. However, because Cho was
19 not majority owner in June and July 2024, Kim concludes that he could not have “substantially
20 assisted or encouraged another to breach a duty” concerning Cho’s alleged majority ownership of
21 CGP. *See id.*; *ESG Cap. Partners, LP*, 828 F.3d at 1039.

22 Even so, Kim argues that Cho failed to meet the heightened pleading requirements of Rule
23 9(b). He points out that while Cho “specifically alleges that the other Defendants recruited Kim to
24 join their scheme in June 2024,” *see* TAC ¶ 228, the TAC “contains no allegation that Kim knew
25 that the Defendants never intended to perform under the agreements when they alleged induced
26 Cho to enter into the agreements.” Kim Repl. at 12. Even if Cho *did* allege that Kim obtained
27 CGP’s confidential information, Kim asserts that “it is entirely unclear how that could possibly
28 relate to fraudulently inducing Cho to enter into agreements with the other Defendants months

1 prior.” *Id.* Rather, all the TAC does is “raise of vague specter of misconduct simply by listing
2 unconnected (and often fabricated) events together, and then baldly asserting that these events
3 establish some nefarious scheme.” Kim Mot. at 14.

4 In response, Cho claims Kim “fails to capture the full breadth of the alleged fraud.” Kim
5 Oppo. at 6. He points to the fact that the TAC alleges that “the fraud Kim abetted included the
6 fraud by CG Invites, Inchul Chung, and Yong Kyu Shin as set forth in his Sixth Claim.” *Id.*
7 (citing TAC ¶ 268). Those defendants “represented they would spin CGP off into an independent
8 entity under Plaintiff’s control with the exclusive right to develop, market, and distribute
9 Ivaltinostat,” but they ultimately “never intended to perform.” *See id.*; TAC ¶¶ 211–15, 216–18.
10 Kim ultimately “aided and abetted this fraud at the end of June 2024 by seeking an attorney’s
11 assistance with shutting down CGP and displacing Plaintiff as the head of the Ivaltinostat clinical
12 trials.” *Id.*; TAC ¶¶ 269–72. Cho also alleges that the TAC shows that Kim “accessed the servers
13 of CGP and CG Invites between June 27 and July 4, 2024, downloading confidential business
14 documents in furtherance of the fraud.” *Id.* at 7; TAC ¶¶ 269–72. Cho therefore argues that Count
15 Ten does not hinge on the timing of his majority ownership of CGP. *See id.*

16 Cho also claims that the TAC’s “particularized allegations of Kim’s destruction of
17 evidence[,] together with Kim’s documented spike in accessing CGP’s servers, and his
18 simultaneous actions in furtherance of the CG Invites Defendants’ scheme to dissolve CGP[,] are
19 sufficient to plead ‘substantial assistance.’” Kim Oppo. at 7; TAC ¶¶ 95–111, 269–76. He points
20 to evidence suggesting that “Kim wiped his CGP electronic devices because they contained
21 evidence Kim sought to conceal from [Cho].” *See Kim Oppo.* at 8. This destruction of evidence,
22 “done in furtherance of the CG Invites Defendants’ concealment of their scheme to dissolve
23 CGP,” ultimately were a “substantial factor” in Cho’s harm because they “delayed . . . discovery
24 of the CG Invites Defendants’ scheme until after Plaintiff had already invested \$600,000 into
25 CGP.” *Id.*

26 Cho relies on *Rubenstein v. Neiman Marcus Group* and *Ramirez v. Bank of America* for the
27 proposition that Rule 9(b) “may be relaxed” when information is “within the opposing party’s
28 knowledge,” or that “plaintiffs cannot be expected to have personal knowledge of the relevant

1 facts.” 687 F. App’x 564, 567–68 (9th Cir. 2017); 634 F. Supp. 3d 733, 740 (N.D. Cal. 2022).
2 Even though Cho admits the allegations that “Kim destroyed the primary evidence of his post-
3 termination activities, and the precise details of which files Kim distributed to the CG Invites
4 Defendants, when he did so, and by what method” are based upon “information and belief,” he
5 argues that these inferences are sufficient even under the Rule 9(b) standard. Kim Oppo. at 8–9.
6 This is especially true considering my SAC Order, Cho concludes, where I found that the alleged
7 spoliation of evidence “calls into question whether Kim was acting with an improper purpose.”
8 *Id.* at 9; *see* SAC Order at 21.

9 This cause of action is plausible. The TAC alleges that Kim accessed the CG Invites and
10 CGP servers hundreds of times after his termination, and destroyed confidential documents.
11 While Cho does not explain what information Kim obtained or deleted during these server
12 accesses, he acknowledges that “investigations into the precise files Leo Kim accessed, altered,
13 downloaded, or destroyed . . . have been frustrated by Leo Kim’s destruction of evidence stored on
14 his CGP-issued laptop and iPhone.” TAC ¶ 274. He also alleges that they were frustrated by “CG
15 Invites’ refusal to fully turnover Leo Kim’s email communications.” *Id.* As a result of Kim’s
16 alleged conduct, “CG Invites [began to use] the confidential CGP documents . . . in furtherance of
17 their fraud,” including “the particular legal actions taken in the weeks immediately after Leo
18 Kim’s departure, such as Inchul Chung and Soo Yeon Oh’s July 18, 2024 Letter demanding”
19 Cho’s resignation. *Id.* ¶ 275. The TAC then goes on to describe how Kim “substantially assisted
20 Defendants’ scheme to execute their fraud” by “illicitly accessing CGP’s servers after [being]
21 notified of his for cause termination.” *Id.* ¶ 276. While some of Cho’s allegations are on
22 information and belief, Cho cannot be more specific in light of Kim’s alleged misconduct. The
23 Rule 9(b) pleading standard must be “relaxed” here. *Rubenstein*, 687 F. App’x at 567–68;
24 *Ramirez*, 634 F. Supp. 3d at 740. Cho’s aiding and abetting claim against Kim may proceed as is.
25 Kim’s motion to dismiss Count Ten is DENIED.

26 **C. Counts Eleven and Twelve – Civil Conspiracy**

27 To plead civil conspiracy, a plaintiff must allege “(1) the formation and operation of the
28 conspiracy, (2) wrongful conduct in furtherance of the conspiracy and (3) damages arising from

1 the wrongful conduct.” *ESG Cap. Partners v. Stratos*, 828 F.3d 1023, 1039 (9th Cir. 2016)
2 (affirming adequacy of civil conspiracy allegations). When the civil conspiracy is to commit
3 fraud, the plaintiff must plead the first two elements with particularity. *Wasco Prods. v. Southwall*
4 *Techs., Inc.*, 435 F.3d 989, 990–91 (9th Cir. 2006); *Armstrong v. Reynolds*, 22 F.4th 1058, 1085
5 (9th Cir. 2022).

6 Kim alleges that Cho’s civil conspiracy claims are predicated on the fact that Kim intended
7 to “displace Cho as the majority owner of CGP,” despite not being the majority owner at the time
8 of his alleged misconduct. Kim Mot. at 12. Accordingly, Cho alleges a conspiracy that, “by [his]
9 own concessions, could not have existed prior to February 12, 2025,” when he obtained majority
10 ownership of CGP. *Id.* In addition, “to the extent that Cho alleges this conspiracy continued after
11 February 12, 2025, Cho has not alleged any actions by Kim even remotely in that timeframe that
12 could suffice to establish ‘wrongful conduct in furtherance of the conspiracy.’” *Id.* at 12–13; *see*
13 *ESG Cap. Partners, LP*, 828 F.3d at 1039.

14 I am unconvinced by Kim’s arguments. I agree with Kim that the SAC Order established
15 that Cho’s civil conspiracy claim “proceeds partly under the assumption that CG Invites would be
16 wrong to ‘take over’ CGP and its clinical trials,” and that if “CG Invites remained the rightful sole
17 owner of CGP even after the execution of the Spinoff Agreements because Cho did not invest the
18 required funds in CGP such that the Shareholder Agreement could close, this is a moot claim.”
19 SAC Order at 17. But I disagree with his ultimate interpretation of Cho’s TAC.

20 The TAC indicates that Cho began investing into CGP on July 15, 2024, and satisfied his
21 payment obligations under the Spinoff Agreements on February 12, 2025. TAC ¶ 147. These
22 payments sufficiently show that he performed under the Agreements and had a claim to the rights
23 and benefits of those agreements. *See id.* ¶¶ 147–51; Kim Oppo. at 12. Cho’s civil conspiracy
24 claim asserts that the goal of this conspiracy was to “appoint Leo Kim the new head of Ivaltinostat
25 department instead of the Cho family.” TAC ¶ 281 (cleaned up). Despite Kim’s arguments to the
26 contrary, *see* Kim Repl. at 12–13, this does not *require* Cho to have majority ownership of CGP at
27 the time of Kim’s alleged misconduct—rather, knowledge of Cho’s eventual ownership stake
28 would suffice to indicate that Kim was engaging in “wrongful conduct in furtherance of a

1 conspiracy” to deprive Cho of the benefits of the Spinoff Agreements. *See ESG Cap. Partners,*
2 *LP*, 828 F.3d at 1039.

3 Here, the TAC establishes enough information to suggest Kim’s knowledge of the Spinoff
4 Agreements, and his purported interest in ensuring it was not met. The TAC shows that Kim
5 “improper[ly] access[ed] . . . and use[d] confidential information stored on CGP’s servers in the
6 days leading up to and following his termination.” TAC ¶ 95. Cho then provides an email sent by
7 Kim on June 29, 2024, which purports to show that he was interested in being “appointed the new
8 head of ivaltinostat develop instead of the Cho family,” mere months after the Spinoff Agreements
9 were entered into by Cho and the CG Defendants. *Id.* ¶¶ 98–99. He also included Kim’s June 30,
10 2024, email, which discussed his “scheme to steal CGP and misappropriate the company’s assets
11 to [his] entity.” *Id.* ¶¶ 100–02. Finally, the TAC indicates that Kim “deleted all data and evidence
12 from the CGP Electronic Devices” both before and after his termination, despite being “aware of
13 his preservation obligations.” *Id.* ¶ 108. This was apparently done in concert with Inchul Chung,
14 as he requested on June 30, 2024, to “keep his CG Invites account active” for an undisclosed time.
15 *Id.* ¶ 110.

16 As indicated in my SAC Order, these facts are sufficient to support a civil conspiracy
17 claim against Kim as well as the other defendants, especially since he has resolved the ambiguities
18 in his performance. While I do not opine on the strength of Cho’s claims with respect to a
19 conspiracy, those are factual questions a jury can resolve. At this stage, Cho has met his burden to
20 survive a motion to dismiss.

21 **D. Count Twelve – Civil Conspiracy**

22 Kim also incorporates the CG Defendants’ derivative claim for civil conspiracy on the
23 basis that Cho lacked standing, as he was not the majority owner of CGP at the time of filing suit.
24 *See* Kim Mot. at 13. For the same reasons described above, *supra* Section 1.B, Cho lacks
25 derivative standing because he has not shown that he was issued shares in CGP at the time of
26 filing this lawsuit.

27 **CONCLUSION**

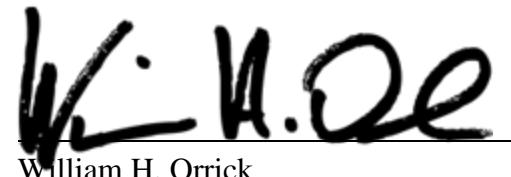
28 Cho’s derivative claims—Count Three (breach of subscription agreement against CG

1 Invites), Count Four (breach of shareholders' agreement against CG Invites), Count Seven (breach
2 of fiduciary duty against CG Invites), and Count Twelve (derivative claim for civil conspiracy
3 against all defendants)—are DISMISSED. Kim's motion to dismiss the TAC's claims against him
4 is GRANTED with respect to Counts Eight (tortious interference of contract) and Twelve
5 (derivative claim for civil conspiracy), but is DENIED with respect to Counts Ten (aiding and
6 abetting) and Eleven (non-derivative claim for civil conspiracy).

7 No further amendment of the TAC is authorized absent a showing of good cause. The
8 defendants shall answer the TAC no later than December 19, 2025.

9 **IT IS SO ORDERED.**

10 Dated: December 4, 2025



11
12 William H. Orrick
13 United States District Judge
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